

THE HON'BLE SRI JUSTICE N.V. RAMANA

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Writ Petition No.21049 of 2007

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Dated: 04.12.2007
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Between:

Vatala Nageswara Rao and another.

.... PETITIONER

AND

The Cooperative Sub-Registrar/
Senior Inspector, KDCC Bank,
Machilipatnam, Krishna District and others.

.....RESPONDENTS

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THE HON'BLE SRI JUSTICE N.V. RAMANA

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Writ Petition No. 21049 of 2007

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Order:

This writ petition is filed questioning the auction conducted by the official respondents of an extent of Ac.2.00 and Ac.3.01 cents of land situated in R.S.No.482/5 of Bandarkota Mandal, Machilipatnam, Krishna District pursuant to the orders dated 4.1.2007 in E.P.Nos.1318 and 1319/OSD/1997-98.

The admitted facts of the case are that the petitioners, who are the wife and husband have taken loans from the 2nd respondent – Bandarkota Primary Agricultural Cooperative Society and because of the non payments of the said loans the 2nd respondent society moved an application for issuance of certificates under Section 71(1) of the A.P. Cooperative Societies Act, 1964 (for short 'the Act') and pursuant to the same, auction was conducted.

It is the case of the petitioners that without any notice to them the certificates under Section 71(1) of the Act have been issued and that the same were also not communicated to them and in pursuance of the said certificates, the society has conducted auction of the said property on 19.5.2006 and since no bidders have participated in the said auction, on 26.5.2006 auction was again conducted and since no bidders have participated in the second auction also, the properties put to auction were set off in favour of the 2nd respondent society for an amount of Rs.5,58,615/- illegally and that the same was conducted without permission from the competent authority. Thereafter in the public auction conducted by the society on 17.9.2007, the 5th respondent has purchased the property for a sum of Rs.13,00,000/-and thus, the sale transaction has taken place in collusion with the official respondents contrary to the procedures and, therefore, the entire sale process is vitiated and the same is liable to be set aside. Hence this writ petition.

The 3rd respondent – Cooperative Sub-Registrar, the 4th respondent – Sale Officer and the 5th respondent – auction purchaser filed separate detailed counters. In nutshell, the stand taken by the respondents is that the auction has been conducted as per the procedure laid down under the Act and that no irregularities have been committed by any of the officers and hence there is no reason to interfere with the auction conducted.

From the narration of the counter affidavits and the arguments of the learned counsel, the following facts emerge.

Admittedly, the petitioners failed to repay the loans obtained by them from the 2nd respondent society and since all the loans became over due and they were pending recoverable for the last more than nine years, the 2nd respondent society filed applications under Section 71(1) of the Act before the 1st respondent requesting him to issue certificates under Section 71(1) of the Act and accordingly the certificates were obtained and 12 EPs were also filed. It is also borne out from the material that the factum of issuance of certificates under Section 71(1) of the Act was intimated to the petitioners on 1.12.1997 by affixture to the doors of their house as they refused to receive the copies of the certificates in person. Admittedly, an appeal lies to the Cooperative Tribunal as against the issuance of certificates under Section 71(1) of the Act and the petitioners have not availed the same. Further, the set off sales were conducted on 26.5.2006 and the sales were confirmed and the sale certificates were also issued by the 3rd respondent by strictly following the provisions of Rule 52 of the A.P.Cooperative Society Rules, 1964 and the auction conducted on 17.9.2007 by the 4th respondent was strictly in accordance with the established procedure. The official respondents have stated

categorically that they have obtained Valuation Certificates from six persons including the one from the Registration Department Authorities according to whom the value for one acre of the land in question was Rs.1,11,500/- and that in the auction they fetched more value than the amounts noted in the valuation certificates. This factum has not been disputed by the petitioners. That apart, pursuant to the auction conducted, the 5th respondent has also deposited the amount and at the time of registration of the property only the petitioners came up with this petition. Further, since the lands fetched more amount than what was actually due to the society, the petitioner has not incurred any loss.

For foregoing reasons, I see no reason to interfere with the impugned auction. The writ petition fails and it is accordingly dismissed. Consequently the interim order granted by this Court on 5.10.2007 shall stand vacated.

N.V. RAMANA, J.

Date: 4.12.2007

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